

**FILED**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

SEP 19 2011

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY                      DEPUTY CLERK

**DUANE DAVIS, TY RANDALL PARMER,  
And JASON WAYNE WARD**

**VS.**

**CIVIL ACTION NO.  
5:11-CV-00450-OLG**

**FLARE IGNITORS & RENTALS, INC.,  
Defendant**

§  
§  
§  
§  
§  
§  
§  
§

**PLAINTIFFS' SECOND AMENDED FEDERAL COMPLAINT**

**TO THE HONORABLE JUDGE OF SAID COURT:**

Now Come Duane Davis, Ty Randall Parmer, Jason Wayne Ward, and James Parsley, Individually, and on behalf of similarly situated present and former employees, hereinafter referred to as "Plaintiffs," complaining of FLARE IGNITORS HOLDINGS, INC. F/k/a FLARE IGNITORS & RENTALS, INC., FLARE IGNITORS & RENTALS, LLC, and FLARE IGNITORS PIPELINE & REFINERY, hereinafter referred to as "Defendants". For cause of action, Plaintiffs would respectfully show unto the Court the following:

**I.**

**PARTIES**

1. Plaintiffs are individuals who reside in the State of Texas.
2. Defendant FLARE IGNITORS HOLDINGS, INC., f/k/a FLARE IGNITORS & RENTALS, INC., is a business entity of unknown form doing business in Bexar County, Texas. Defendant has been served and has answered and removed this matter to federal court.
3. Defendant FLARE IGNITORS & RENTALS, LLC is a business entity of unknown

form doing business in Bexar County, Texas. A request for waiver has been forwarded to Defendant, whose agent and president in San Antonio, Bexar County, Texas is Cameron Sherwin, Flare Ignitors Holdings, Inc., 13506 Topper Circle, San Antonio, Texas 78233.

4. Defendant FLARE IGNITORS PIPELINE & REFINERY is a business entity of unknown form doing business in Bexar County, Texas. A request for waiver has been forwarded to Defendant, whose agent and president in San Antonio, Bexar County, Texas is Cameron Sherwin, Flare Ignitors Holdings, Inc., 13506 Topper Circle, San Antonio, Texas 78233.

## II.

### VENUE AND JURISDICTION

5. Venue of this lawsuit is proper in Bexar County, Texas and this district in that all or a substantial part of events or omissions giving rise to this cause of action occurred in Bexar County, Texas. Moreover, venue is proper in Bexar County, Texas in that the Defendant conducts business in that County.

6. This court has jurisdiction pursuant to 28 U.S.C. section 1331

## III.

### MISNOMER/MISIDENTIFICATION

7. In the event any parties are misnamed or are not included herein, it is Plaintiffs' contention that such was a "misidentification," "misnomer" and/or such parties are/were "alter egos" of parties named herein. Alternatively, Plaintiffs contend that such "corporate veils" should be pierced to hold such parties properly included in the interest of justice.

## IV.

### RESPONDEAT SUPERIOR

8. Employees involved in this cause of action were, at all times described herein,

employees and vice-principals of Defendant(s) and were at all times acting in the course and scope of that employment. Accordingly, Defendant(s) are liable for such conduct under the doctrine of *Respondeat Superior*.

V.

**FACTUAL BACKGROUND**

9. Plaintiffs are former employees of Defendant(s). Plaintiffs and other unnamed present and/or former employees of Defendant(s) were required to work in excess of 40 hours per week but were not paid overtime as required by law. The Defendants' failure to pay overtime pay violated the Fair Labor Standards Act (FLSA). Therefore, Plaintiffs and said present and/or former employees are entitled to recover pay for each hour worked in excess of 40 hours during any one work week at the rate of one and one half times his hourly rate.

10. Further, Plaintiffs would show that the FLSA violations were willful and intended to mislead Plaintiffs by stating in the employee handbook that they were not entitled to overtime, even though it was a violation of law. Therefore, Plaintiffs are entitled to three years of accrued, unpaid overtime pay.

11. Plaintiffs are also entitled to liquidated damages in an amount equal to the overtime benefits due because of the willful nature of the Defendants' failure to take reasonable steps to comply with the FLSA.

12. Plaintiffs are also entitled to compensatory damages and punitive damages as allowed by law.

13. Plaintiff Duane Davis further asserts that he has further been subjected to retaliation based on his assertion of a claim for the FLSA violations and reports of illegal acts by one

or more Defendants, including assertions of false claims against him, abuse of process and slander.

14. Plaintiff Duane Davis was an employee of Flare Ignitors & Rentals, Inc. and Flare Ignitors Pipeline & Refinery LLC (see declaration of Duane Davis attached as Exhibit2 to Brief In Support of Plaintiff's Motion for Expedited Notice to Potential Plaintiffs and To Toll The Statute of Limitations (Dkt 3-3).

15. Ty Randall Parmer was an employee of Flare Ignitors & Rentals (Dkt 3-4).

16. Jason Wayne Ward was an employee of Flare Ignitors & Rentals, Inc.

17. James Parsley was an employee of Flare Ignitors & Rentals, LLC.

18. Each had a handbook indicating that they were not entitled to overtime and they were not paid overtime as required by law.

19. These companies were all inter-related and shared the same owners and/or operators.

#### VI.

#### ATTORNEY'S FEES

20. It was necessary for Plaintiffs to retain the services of the undersigned attorney to prosecute this action. Plaintiffs are entitled to recover the reasonable and necessary attorneys fees, expert fees and court costs to prosecute this action.

#### VII.

#### JURY DEMAND

21. Plaintiffs hereby demands a trial by jury.

#### VIII.

#### CONCLUSION

22. WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the Defendants be

cited to appear and answer herein and that upon a final hearing hereof, a judgment be rendered for Plaintiffs and against the Defendants, for the damages set out above in an amount the jury deems reasonable under the circumstances, along with attorneys' fees, costs of court, pre-judgment interest, post-judgment interest, and for such other and further relief to which Plaintiffs may show themselves justly entitled.

Respectfully Submitted,



---

Adam Poncio  
State Bar No. 16109800  
PONCIO LAW OFFICES  
A Professional Corporation  
5410 Fredericksburg Road, Suite 109  
San Antonio, Texas 78229-3550  
Telephone: (210) 212-7979  
Facsimile: (210) 212-5880

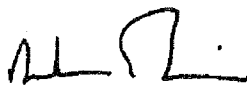
Chris McJunkin  
State Bar No. 13686525  
2842 Lawnview St  
Corpus Christi, Texas 78404  
Telephone: (361) 882-5747  
Facsimile: (361) 882-8926

**ATTORNEYS FOR PLAINTIFFS**

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 10<sup>th</sup> day of August, 2011, a copy of this pleading was forwarded to the following counsel on behalf of Defendants as part of the court's electronic filing system:

Ramon Bissmeyer  
Mike Lennane  
Cox & Smith  
122 East Pecan Street, Suite 1800  
San Antonio, Texas 78205

  
\_\_\_\_\_  
Adam Poncio